

**SEPARATE STATEMENT OF
CHAIRMAN MICHAEL K. POWELL**

Re: Review of the Commission Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Services by Incumbent Local Exchange Carriers (WC Docket No. 03-173.

Seven years is a long time in the telecommunications industry. At the time the Commission initially adopted its pricing rules in 1996, it promised to review them after states had implemented the first round of pricing decisions. I am pleased that today – seven years after the first pricing rules were adopted – the Commission has moved to keep the promise we made in 1996. Today's Notice represents the first-ever comprehensive and directed approach to reviewing our TELRIC pricing methodology.

Now that competition has taken root in many areas of the country, we initiate this proceeding to consider whether our pricing rules are working as intended, in particular, whether it is conducive to facilities investment. The stakes are high: without the correct pricing signals in the market, our rules can thwart a central purpose of the Act, the development of facilities-based competition.

The hypothetical nature of the TELRIC inquiry has been difficult for states to implement and has resulted in a lack of consistency that disadvantages incumbents and competitors alike. It is my hope that at the end of this proceeding the market will benefit from a methodology that is less theoretically freewheeling. The tentative conclusion stated in the item supports this policy direction. While I have heard some concern surrounding the tentative conclusion, our commitment to retaining a forward-looking approach is unwavering – what we are debating is the extent to which realistic assumptions about the incumbent's network should be included in our pricing rules. I believe that an approach grounded in the real-world attributes of the incumbent's network would address claims that our TELRIC rules currently distort a competitor's decision whether to invest in new facilities or to lease an incumbent's existing facilities.

I look forward to reviewing the submissions in the proceeding and working with state regulators to capture the experience they have gained implementing our pricing methodology. Finally, I appreciate the support of my colleagues in initiating a fair and balanced review of our pricing rules.

**SEPARATE STATEMENT OF
COMMISSIONER KATHLEEN Q. ABERNATHY**

Re: Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173.

Since joining the Commission, I have advocated taking a fresh look at the Commission's UNE pricing rules, and I am pleased that we are commencing such a proceeding today. The Notice recognizes two key problems with the TELRIC pricing standard. First, it is a black box that permits inconsistent results among the states for reasons unrelated to actual cost differentials, and it also permits internal inconsistencies within individual rate proceedings. Second, the excessively hypothetical nature of the Commission's existing standard sends inappropriate investment signals and produces irrational pricing in some instances.

The Notice we adopt today sets us down a different path — one bounded by the real-world attributes of incumbent LECs' networks and the recognition that wireline networks cannot incorporate new technologies instantaneously. I support the tentative conclusion in the Notice that reflects these concepts. In fact, despite the controversy often surrounding tentative conclusions, I believe that most carriers agree that the UNE pricing standard should be constrained by reality, as opposed to being purely hypothetical. Incumbents and competitors simply disagree about the extent to which current prices are grounded in realistic assumptions about network architecture and usage patterns. This rulemaking will put their competing claims to the test, and it will give parties the opportunity to propose a variety of methodological changes concerning how states determine input values. It will also enable the Commission to modify pricing rules in accordance with the changes to our unbundling regime that were adopted in the *Triennial Review Order*. I commend the Wireline Competition Bureau and my colleagues for drafting a comprehensive and balanced NPRM, and I look forward to reviewing the record and adopting revised rules.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS,
APPROVING IN PART AND DISSENTING IN PART**

Re: *Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers (WC Docket No. 03-173)*

Seven years ago, the Commission adopted a forward-looking economic cost policy for pricing unbundled network elements. We did the right thing. The Supreme Court blessed our action—pretty heady stuff for a Commission not always accustomed to such approbations from above. So we're building on solid ground here, with no judicial charge to start all over or to perform drastic reconstruction. It's clear to me that from time to time we should review and recalibrate our policy, known as Total Element Long Run Incremental Cost, or TELRIC. We have a duty to adjust it over time to ensure that, as Congress intended, incumbents are justly compensated for their network costs plus a reasonable profit. At the same time, we need to ensure that competitors pay prices that induce efficient market entry. There is also the need to adjust our policy to reflect the new realities of the recent *Triennial Review*.

To a significant extent we initiate a proceeding today that lays the groundwork for accomplishing these objectives. There is much in this item that I am pleased to support. I regret, however, that I cannot support today's Notice of Proposed Rulemaking *en toto*. I just don't believe the record at hand justifies the making of important, even if tentative, conclusions. Such tentative conclusions often have a curious way of becoming final. On the basis of little or no prior record, the majority today adopts a tentative conclusion concerning so-called real-world network attributes that I believe is confusing and inconsistent with basic premises of TELRIC that were upheld as a reasonable interpretation of Section 252(d)(1) by the Supreme Court. For a Commission striving to provide clarity to an industry, this is a strange way to do it.

Moreover, some of the questions that flow from this tentative conclusion come close to saying that the assumptions that undergird our TELRIC policy are misdirected and flawed. Again, these are the same assumptions that passed muster with the highest court in the land. I have no objection to asking probing questions; I just think that a tentative conclusion here is unnecessary and probably unwise.

Despite this reservation, I appreciate my colleagues' willingness to engage in a dialogue and their efforts to accommodate some of my concerns. I think this is a stronger item as a result. I look forward to our continuing work together on this.

Finally, I hope—I really hope—that we can encourage all the parties interested in TELRIC to sit together and discuss the issues attending it in something approaching candor and maybe even a little cooperation. I think all the company CEOs and others directly impacted have heard my plea on this over the past two years since I came here.

Frankly, it was easier to get the Russians and the Chinese to sit down with us during the latter days of the Cold War than it is to convene a TELRIC dialogue. It's not that I expect everyone to come to a joyous outcome on this, but rather just a hope that there might be one or two or maybe even three facts we could agree on and then see if from a small patch of common ground we can't do some building out. I'd like to see everyone a part of this—incumbents and competitors, our Commission and the State Commissions, traditional and non-traditional stakeholders. Crafting appropriate rules for our unbundled network element pricing policy will be a daunting task. We cannot get it done without less rhetoric and more dialogue among all the players. Toward that end, Mr. Chairman and my colleagues, I would very much like to see us hold some hearings or a forum to bring the players together, or perhaps even commence a Joint Conference to jumpstart discussion and engage our counterparts in the States on this important topic. I think this would be an excellent way to follow through on the work this proceeding today commences.

STATEMENT OF
COMMISSIONER KEVIN J. MARTIN

Re: Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers. WC Docket No. 03-173

I am pleased that we are taking action to alter our existing TELRIC pricing regime. Today, we tentatively conclude that our unbundled network element pricing methodology, while forward-looking, should be based upon the incumbent local exchange carrier's actual network rather than the totally hypothetical assumptions contained in a cost proxy model. I believe that the prices for unbundled network elements should be based on the forward-looking replacement cost of the ILEC's network.

As I have long stated, I believe that the TELRIC rules should be reviewed and revised. I have also stated before that the existing TELRIC formula may provide incumbent service providers with an insufficient return on investment capital for new infrastructure. Today's item, in conjunction with our decision in the recent Triennial Review Order, begins the process to provide the necessary adjustments to the TELRIC formula that will more accurately reflect incumbent costs and help spur deployment in new facilities and services.

While I am pleased that we are initiating this proceeding, I am cognizant that the Wireline Competition Bureau's interpretation of the TELRIC pricing rules in the recent Virginia Arbitration Order may not reflect the direction and spirit of today's decision.

**STATEMENT OF
COMMISSIONER JONATHAN ADELSTEIN**

Re: Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers, WC Docket No. 03-173

I lend my support to today's Notice because I believe that it is reasonable and appropriate to look once again at our pricing rules for unbundled network elements, interconnection, and resale of service under Sections 251 and 252 of the Act. These pricing rules, while certainly esoteric, have an enormous impact on the telecommunications industry and on consumers. If prices for unbundled network elements are too high, competitors may face much greater hurdles than Congress intended -- particularly given our recent decision in the Triennial Review Order, that limits unbundling to those facilities for which competitors are truly impaired -- and may be limited in the services which they can offer. On the other hand, if the prices for unbundled elements are too low, this could have serious consequences for our nation's incumbent carriers. For the American consumers who obtain more than 18 million lines from competitors by resale or unbundled elements, our decision can mean the difference between having a choice of providers or returning to a world of one option. So, the stakes are high.

While I am sympathetic to concerns that this Notice may open another source of regulatory instability, it has been seven years since the FCC adopted these rules and this is the first comprehensive review. Through the Triennial Review process, our section 271 review, and discussions with carriers, numerous concerns have been raised. We must look carefully at these concerns and it is fair to open this dialogue.

That said, I enter this proceeding with a very open mind. Our TELRIC pricing rules have been challenged in almost every forum and on just about every basis since their adoption in August of 1996. Despite those challenges, our rules have been upheld by the highest court of the land. The Supreme Court's affirmation of our rules sent a strong signal that the Commission had struck the right balance. Indeed, by making parts of the incumbents' network available to competitors at economic cost, our rules enable consumers to reap the benefits of the incumbents' economies of scope and scale, as well as the benefits of competition. Moreover, the investment that these rules have encouraged has been remarkable; as noted by the Supreme Court, competitors have invested approximately 51 billion dollars between 1996 and 2000, which is now up to 71 billion dollars according to recent estimates. I recognize, however, that there may be ways to improve these rules.

Given the Supreme Court's endorsement of our existing rules, the importance of this proceeding, and the fact that we have no direct record on these issues, I would strongly prefer to issue this Notice without any tentative conclusions, simply seeking comment on how we might improve our rules. The Notice seeks comment on several alternatives for modifying our rules, but I am pleased that the item does not specifically endorse any single alternative methodology. I nonetheless join in a limited tentative conclusion that our TELRIC rules should more closely account for certain real-world factors -- namely, the routing and topography of the incumbent LEC's network. Because this issue has become a flash-point for criticism of our TELRIC rules, I

believe that it is worthwhile to signal to the outside community that the FCC has concerns about how our rules account for these factors. I should make clear, however, that I remain open to all possibilities in this proceeding and will look carefully at the evidence filed on this and other issues.

It is critical that we develop a full and comprehensive record in this proceeding and that we not rush to judgment before analyzing this record. To this end, I encourage and fully expect that we will see active participation by our colleagues from the state public utility commissions. They have front line experience implementing our rules and are perhaps best positioned to explain how the current rules have been implemented, where they are ambiguous, where they are problematic, and where they have functioned well.

I would like to thank my colleagues, particularly the Chairman, for seeking our input on this item and working to accommodate many of our concerns. I would also like to thank Bill and his team for their hard work on this item and to wish them well as we kick off what will be, I'm sure, a challenging proceeding.